IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WP(C).No. 6170 OF 2007(S)

M.C. 131/2006 OF FAMILY COURT, KANNUR

PETITIONER:

P.V.DASAN, S/O.LATE GOVINDAN,
AGED 52 YEARS, RESIDING AT POOVANTAVIDA HOUSE,
NEDUMBRAM AMSOM DESOM, P.O.CHOKLI, THALASSERY
TALUK, KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

P.SOBHA, D/O.KANARAN, AGED 37 YEARS,
RESIDING AT PUNATHIL HOUSE, OLAVILAM AMSOM,
PERINGADI DESOM, P.O.PERINGADI, THALASSERY TALUK,
KANNUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & S. SIRI JAGAN, JJ.

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W.P.(C) NO. 6170 OF 2007

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DATED THIS, THE 23RD DAY OF FEBRUARY, 2007

J U D G M E N T

Raman, J.

Petitioner is the husband who filed a divorce petition as O.P. 138/2003 before the Family Court, Kannur under Section 13(1)i and (ia) of the Hindu Marriage Act. Among other things, it was alleged that the wife is living in adultery. The Family Court, on consideration of the materials placed on record, found that the allegation is not sustained and dismissed the petitioner. Petitioner has already preferred an appeal therefrom; but not numbered. In the meantime, the respondent wife filed M.C. 131/2006 before the Family Court, Kannur, claiming maintenance. Seeking stay of further proceedings in M.C. 131/2006, the husband has filed this writ petition.

2. It is inter alia contended that if in the appeal filed against the judgment of the Family Court in the divorce petition is allowed on the grounds raised therein and the allegation being that the wife is living in adultery, there will not be any legal obligation on the part of the husband

to pay maintenance to her. We are not impressed with this contention. Merely because an appeal has been preferred against the order of the Family Court dismissing the divorce petition, the proceedings seeking maintenance cannot, for that reason, be stayed. When admittedly as per the present judgment the divorce petition having been dismissed, as on today, there is no scope for consideration of the contention now raised.

In such circumstances, there is no justification to stay the maintenance case. No interference is called for under Article 227 of the Constitution of India.

Dismissed.

P.R. RAMAN,
JUDGE.

SIRI JAGAN,
(JUDGE)

knc/-